

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

WESLIE MARTIN,

v.

UNDERWOOD, *et al.*,

Plaintiff,

Defendants.

Case No. 3:23-cv-00423-MMD-CLB

ORDER

This action began with a civil rights complaint under 42 U.S.C. § 1983 and an application to proceed in forma pauperis submitted by then state prisoner Weslie Hosea Martin (“Weslie”). (ECF Nos. 1-1, 1.) During the pendency of this lawsuit, the Nevada Department of Corrections filed a suggestion of death on the docket in another of Weslie’s lawsuits. See *Martin v. The State of Nevada*, No. 3:21-cv-00365-RCJ-CSD, at ECF No. 15 (D. Nev. Sept. 25, 2023). On December 6, 2023, the Court denied all pending applications and motions and ordered this action would be dismissed unless a motion to substitute under the Federal Rule of Civil Procedure 25(a)(1) was filed by March 5, 2024. (ECF No. 5.) When no timely motion was filed, the Court dismissed and closed this action. (ECF Nos. 7, 8.) However, the Court reopened this action on the motion of Weslie’s brother Denzel Hosea Martin (“Denzel”) seeking that relief and to substitute under Rule 25. (ECF No. 13.) The Court denied Denzel’s request for substitution because it was not properly supported, and gave him until August 7, 2024, to file a new fully supported motion for that relief. (*Id.*)

Through counsel, Denzel now moves for substitution, explaining his slight delay in filing the motion is the product of excusable neglect and stating that he is Weslie’s brother and the special administrator of his estate. (ECF No. 18 at 2.) To support his argument that he is the proper person to be substituted, Denzel provides Letters of Special

1 Administration showing that Nevada's Eighth Judicial District Court granted his petition to
2 be appointed as special administrator of the Estate of Weslie Hosea Martin on August 1,
3 2024. (ECF No. 18-1.)

4 Good cause appearing, it is hereby ordered that Denzel's motion for substitution
5 under Rule 25(a)(1) (ECF No. 18) is granted.

6 It is further ordered that the Clerk of the Court will substitute "Denzel Hosea Martin,
7 Special Administrator of the Estate of Weslie Hosea Martin" as the plaintiff in this action.
8 Denzel will be permitted to maintain the claims that Weslie sought to bring in this action.

9 It is further ordered that Denzel has until December 21, 2024, to file either a written
10 notice informing the Court that he intends to proceed on the complaint and exhibits that
11 Weslie submitted (ECF No. 1-1) or a first amended complaint to attempt to replead those
12 claims with the assistance of counsel.

13 It is further ordered that Denzel has until December 21, 2024, to either pay the full
14 \$405.00 filing fee for this civil action or file an application to proceed in district court
15 without prepaying fees or costs under 28 U.S.C. § 1915.¹

16 Denzel is advised that if he elects to file an application to proceed in forma pauperis
17 and the Court grants him that status, then the Court will screen the original complaint or
18 first amended complaint, whichever pleading he elects to proceed on, under 28 U.S.C.
19 § 1915(e)(2). But if Denzel pays the filing fee, the Court will not screen his pleading and
20 this action will proceed onto the normal litigation track. In either event, the Court will enter
21 a separate order about the issuance of summonses and service on the defendants when
22 it is time to do so.

23 DATED THIS 22nd Day of November 2024.



24
25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
27

28 ¹The application to proceed in district court without prepaying fees or costs is
publicly accessible on the forms section of the U.S. District Court, District of Nevada
website at: <https://www.nvd.uscourts.gov/court-information/forms/>.